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| APPLICATION NO.     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---------------------|-------------|----------------------|-----------------------|------------------|
| 10/587,091          | 07/20/2006  | Salvatore Carbone    | RUBNP01               | 8907             |
| 49691               | 7590        | 07/08/2009           | EXAMINER              |                  |
| IP STRATEGIES       |             |                      | LONG, ROBERT FRANKLIN |                  |
| 12 1/2 WALL STREET  |             |                      |                       |                  |
| SUITE E             |             |                      | ART UNIT              | PAPER NUMBER     |
| ASHEVILLE, NC 28801 |             |                      | 3764                  |                  |
|                     |             |                      |                       |                  |
|                     |             |                      | MAIL DATE             | DELIVERY MODE    |
|                     |             |                      | 07/08/2009            | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/587,091             | CARBONE, SALVATORE  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Robert F. Long         | 3764                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 April 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 15 and 17-30 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 15 and 17-30 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/20/09 has been entered.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "dumb-bells" in claim 1, the "rods, pedals, switches or push buttons" in claim 1, the "levers and pulleys" in claim 18, the "rods" in claim 20, the "switchboard" and the "advertising material" in claim 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: The specification on page 6, lines 1-4, recites "In figures 1, 4 & 5 the brackets which hold the weights (F) are represented. In figure 4 the hooks (G) to hold the weights are represented" in which it is unclear what "F" is representing since "brackets which hold the weights (F)" the figure shows brackets "F" with no weights attached and the hooks G are only shown in figure 4 indicating this maybe meant to be another embodiment. Also, on page 5, line 10, the specification recites "universal brackets" to hold the weights. Thus, it is not clear how the weights are being attached or what the "brackets" are. Examiner is interpreting "F" to be the brackets and the weights as not being shown. Examiner is also interpreting "G" to be to another embodiment not being claimed. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 15, 17, and 19-30,** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Capizzo (US 6926648 B2) in view of Parker (US 6805409 B2).**

**Regarding claims 15, 17, 19-21, and 24-28 and 30,** Capizzo discloses gym work-out equipment for the training of the chest, deltoids, trapeziums and triceps muscles, comprising: a bench (104) including a back-rest, that allows an athlete to do exercises with the back-rest in a horizontal position for stretching and pectoral crosses, a slanted position for pectoral crosses and an up-right position for deltoids and stretching with dumb-bells for triceps; (incline or decline and other benches, column 8, lines 9-14) and an assist system (stands 1 and 2), including servomechanism arms (upper translating assembly 15) adapted to hold weights with a universal bracket (support member 6/6a), a mechanical, hydraulic, electrical, or pneumatic or

electromechanical having switches lift system (linear motion actuator 13/control rods 7, column 6, lines 1-33) adapted to lift the arms, and a command device (dual actuator controller 3) that controls the assist system when activated through the use of rods, pedals, switches or push buttons (control rods 7, upper translating assembly 15, controller 3) wherein the arms are adapted to lift the weights held by the arms under control of the command device, to assist the athlete without requiring the athlete to get up from or change the position of the bench and wherein the arms are adapted to position the weights with respect to the bench and the exercise to be performed by the athlete, (Abstract, and incline, decline and other benches, column 8, lines 9-14).

*Capizzo States, "invention could be easily modified dimensionally to accommodate incline and decline bench presses and seated benches used for shoulder press types of exercise", (column 8, lines 9-14).*

Capizzo also discloses side panels to form a barrier (cover panels 27-30) around the electrical and mechanical parts which could be used for marking and/or advertising.

*Capizzo States, "A graduated scale 110 in the form of markings or a decal can be included on the cover 28", (column 6, lines 34-64).*

Capizzo fails to disclose that these "seated" benches include a movable/adjustable bench and to use the covers for marketing/advertising purposes.

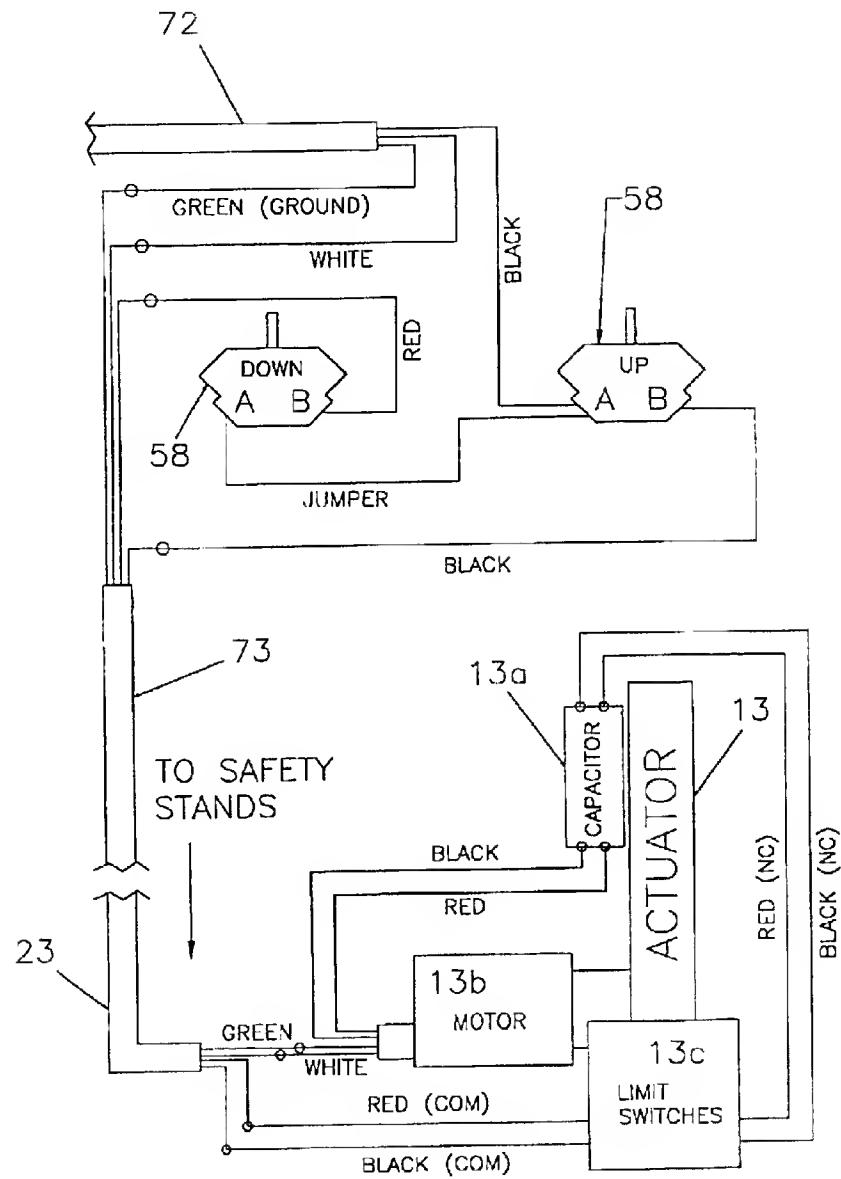
Parker discloses an articulated/adjustable and movable bench, (column 4, lines 1-67, column 5, lines 1-67, column 6, lines 1-67, figures 1-3).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify/substitute the seated benches and/or bench (104) of

Capizzo's to be a movable/adjustable bench as taught in Parker for the desired exercise routine and to further use the cover panels for marketing/advertising if desired since Capizzo already teaches marking the covers with graduated scales.

**Regarding claims 22-23, and 29,** Capizzo discloses an electronic switchboard (control circuit figure 6) that is adapted to store in memory data (selectable raising and lowering by user input, column 4, lines 50-67), representing arm positions chosen by the athlete according to exercises done and a foot support/rest having the command device disposed on the foot support/rest (foot pedal controller assembly 3, column 6, lines 65-67, column 7, lines 1-49, figures 4-6). See figure 6 below for control circuit and foot pedals (#58) command device schematic –

**U.S. Patent** Aug. 9, 2005 Sheet 6 of 6 **US 6,926,648 B2**



**FIG.6**

**Claims 15, 19, 21, and 24-28 and 30,** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rodriguez (US 6086520 A) in view of Parker (US 6805409 B2).**

**Regarding claims 15, 19-21, and 24-28 and 30,** Rodriguez discloses gym work-out equipment (weight supporting system 10) for the training of the chest, deltoids, trapeziums and triceps muscles, comprising: a bench (22) including a back-rest, that allows an athlete to do exercises with the back-rest in a horizontal position for stretching and pectoral crosses, a slanted position for pectoral crosses and an up-right position for deltoids and stretching with dumb-bells for triceps; (column 2, lines 53-56) and an assist system (supporting units 20), including servomechanism arms (upper extents 34) adapted to hold weights with a universal bracket (rest 42), a mechanical, hydraulic, electrical, electromechanical having switches or pneumatic lift system (electric motor 48/jack screw 46) adapted to lift the arms, and a command device (pedal 24/activation button 54, column 2, lines 48-54, column 3, lines 20-30) that controls the assist system when activated through the use of rods, pedals, switches or push buttons (plungers 64, button 54, jack screw 46, spring 56, column 3, lines 20-42) wherein the arms are adapted to lift the weights held by the arms under control of the command device, to assist the athlete without requiring the athlete to get up from or change the position of the bench and wherein the arms are adapted to position the weights with respect to the bench and the exercise to be performed by the athlete, (invention can be employed with other exercises such as incline bench press, butterfly, and leg lift exercise, column 2, lines 53-60).

Rodriguez also states “*invention also employs a containment system for selectively restraining the sliding movement of the motor platform*” (column 3, lines 44-50). Examiner is interpreting the selective restraining sliding movement to enable an athlete to position the arms as desired prior, during, and even after an exercise.

Rodriguez also discloses side panels to form a barrier (housing 28) around the electrical and mechanical parts that could be used for advertising.

Rodriguez fails to disclose that the bench (22) is a movable/adjustable bench and to use the covers for marketing/advertising purposes.

Parker discloses an articulated/adjustable and movable bench, (column 4, lines 1-67, column 5, lines 1-67, column 6, lines 1-67, figures 1-3).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify/substitute the bench (22) of Rodriguez to be a movable/adjustable bench as taught in Parker for the desired exercise routine and to further use the cover panels for marketing/advertising if desired.

**Claim 18**, is rejected under 35 U.S.C. 103(a) as being unpatentable over **Capizzo (US 6926648 B2) in view of Hummer Jr. (US 7001314 B1)**.

Capizzo discloses a Capizzo discloses an assist system (stands 1 and 2), including servomechanism arms (upper translating assembly 15) adapted to hold weights with a universal bracket (support member 6/6a), a mechanical, hydraulic, electrical, or pneumatic or electromechanical having switches lift system (linear motion

actuator 13/control rods 7, column 6, lines 1-33) adapted to lift the arms, and a command device (dual actuator controller 3).

Capizzo also teaches using a variety different actuators, (column 6, lines 10-33).

Capizzo states, "*The linear motion actuator can be chosen from the field of electric, hydraulic, pneumatic or other type of powered linear motion actuator. A Duff-Norton electric actuator model number HMPB 6905 can be used*", (column 6, lines 10-33).

Capizzo fails to disclose using a pulley.

Hummer Jr. teaches a similar dumb-bell spotting exercise device using a pulley 154, with a control box 163, shaft 152 and a motor 150, to lift a pair of dumb-bells (column 4, lines 37-59, figures 1-10).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a pulley in conjunction with the linear motion actuator 13, control rods 7, (column 6, lines 1-33) and/or use an actuator that has a pulley in order to lift the dumb-bells in the desired manner.

### ***Response to Arguments***

Applicant's arguments with respect to claims 15-30 have been considered but are moot in view of the new ground(s) of rejection of newly cited art. In regards to Rodriguez failing to discloses an bench that can be inclined can be found (column 2, lines 53-60) and the movable/adjustable bench of Parker could be easily substituted to

have the desired incline/decline adjustment. Also, the arms adapted to be positioned before, during or even after an exercise is found in Rodriguez, (*column 3, lines 44-50*).

Although the invention does prove to be useful, the prior art of record shows that the claimed inventive device is not different or novel as claimed in the text.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert F. Long whose telephone number is (571)270-3864. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert F Long/

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Examiner, Art Unit 3764  
Wednesday, July 01, 2009

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764